DOCKET FILE COPY CRIGINAL KELLEY DRYE & WARREN LLP

A L M TE L ABILITY MARTNERS-IP

TYSONS CORNER

8000 TOWERS CRESCENT DRIVE

SUITE 1200

VIENNA, VIRGINIA 22182

(703) 918 2450 www.kelleydrye.com

FACSIMILE

(703) 918-2300

January 5, 2004

RECEIVED & INSPECTED

IAN 7 2004

FCC - MAILROOM

BRUSSELS BELGIUM

HONG KONG

AFF LIA'E JFFICES

BANGKOK THAILAND
JAKAR'A INDONESIA

MANILA THE PHILIPPINES

MUMBAI INDIA

NEW YORK NY

WASHINGTON DC

LOS ANGELES CA

CHICAGO L

STAMFORD CT

PARSIPPANY NJ

By UPS

*OKYC JAPAN

Ms Marlene H Dortch Office of the Secretary Federal Communications Commission 445 12th Street, S W. Suite TW-A325 Washington, D C 20554

Re:

Operator Communications, Inc's Response to the Wireline Competition Bureau's Request to Update Record in Docket Nos 96-262, 94-1, 91-213 and 95-72 — Motion to Accept Filing as Timely Filed

Dear Ms Dortch.

Operator Communications, Inc. ("OCI"), by its undersigned attorneys, hereby files its response to the Wireline Competition Bureau's request to update the record in Docket No 95-72. A copy of the response is attached as **Attachment A**. The attached response was filed electronically in Docket Nos. 96-262, 94-1 and 91-213 on December 31, 2003. However, Docket Number 95-72 was not accepting electronic filings on that date (see **Attachment B**). Accordingly, per the advice of Ruth Dancey of the Office of the Secretary, OCI now submits a hard copy of the December 31, 2003 letter for filing in that docket and respectfully requests that the Commission accept it as timely filed on December 31, 2003.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact the undersigned at (703) 918-2300.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch January 5, 2004 Page Two

Respectfully submitted,

audrea P. Edmonds

Danny E Adams Andrea P Edmonds

APE:APE

cc Aaron Goldschmidt, Wireline Competition Bureau (2 copies)
Qualex International (via e-mail)
Debbie Hargrave, Operator Communications, Inc

ATTACHMENT A

KELLEY DRYE & WARREN LLP

Ξ,

FACSIMILE

(703) 918-2450

www.kellevdrye.com

TYSONS CORNER

8000 TOWERS CRESCENT DRIVE

SUITE 1200

VIENNA, VIRGINIA 22182

NNA, VIRGINIA ZZIBZ

(703) 918-2300

BRUSSELS B€LG UM

NEW YORK NY

WASHINGTON DC

JOSANGE ES CA

CHICAGO IL

PARSIPPANY NJ

HONG KONG

AFFITATE OFFITES

BANGKOK THAILAND

JAKARTA INDONESIA

MANILA THE PHILIPPINES

MUMBA INDIA

TOKYO JAPAN

December 31, 2003

BY HAND DELIVERY

Ms Marlene H Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

Re Operator Communications, Inc's Response to the Wireline Competition Bureau's Request to Update Record in Docket Nos. 96-262, 94-1, 91-215 and 95-72

Dear Ms Dortch:

Operator Communications, Inc ("OCI"), by its undersigned attorneys, hereby responds to the Wireline Competition Bureau's request to update the record pertaining to petitions for reconsideration filed by various parties in response to the Federal Communications Commission's ("Commission") rules adopted in the 1997 Access Charge Reform First Report and Order ("1997 Order")

As an initial matter, OCI applauds the Commission's efforts to resolve any remaining issues arising from the 1997 Order in the above-referenced dockets. Fortunately, as a result of the Commission's June 23, 2003 decision clarifying that payphone lines are exempt from the PICC charge, ¹ all issues raised by OCI in its April 22, 1998 request for clarification have now been addressed.² In the Order on Reconsideration, the Commission concluded that assessing the multi-line PICC on payphone lines does not relate to the costs of the lines on which

See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers.

Order on Reconsideration, CC Docket Nos. 96-262, 94-1 (tel. June 25, 2003) ("Order on Reconsideration")

See Letter from Siephen H. Loberbaum, General Counsel, Operator Communications, Inc., to Richard A. Metzger. Chief, Common Carrier Bureau. Federal Communications Commission (dated April 22, 1998)

KELLEY DRYE & WARREN LLP

Ms Marlene H Dortch December 31, 2003 Page Two

it is assessed and, therefore, is not cost-based.³ As such, it fails to comply with the "new services test," which the FCC has said is required by Section 276 of the Telecommunications Act of 1996 (the "Act") ⁴

Because the Commission has finally considered and determined that application of the PICC on payphone lines is inconsistent with the Act, OCI's ongoing challenge to the local exchange carriers' past and current practice of assessing the PICC on its payphone lines has finally been resolved in OCI's favor—Provided that its interpretation of the Commission's *Order on Reconsideration* is correct, OCI has no further interest in pursuing its request for clarification.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact the undersigned at (703) 918-2300.

Respectfully submitted,

Lung & Har

Danny E Adams Andrea P. Edmonds

APE.APE

cc Debbie Hargrave, Operator Communications, Inc.

Id at ¶ 7

Id In the First Payphone Order, the FCC determined that in furtherance of Section 276 of the Act payphone lines rates should be set according to the cost-based new services test. See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20,541, 20,614 (1996)

ATTACHMENT B



Application Error(s)

Proceeding 95-72 is not open for submission to ECFS.

Press the back button on your browser to return to the form and make the necessary corrections.

Return to the ECFS Home Page

FCC Home Page Search Commissioners Bureaus/Offices Finding Info

updated 02/11/02